

Kevin Bratcher - 9/30/2021
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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

KEVIN BRATCHER,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:20-cv-02056-SB
)	
POLK COUNTY; CITY OF SALEM;)	
DEPUTY MICHAEL H. SMITH, in)	
his individual capacity; and)	
DOES 1-4 in their individual)	
capacity,)	
)	
Defendants.)	
)	

DEPOSITION OF KEVIN BRATCHER
Taken in Behalf of the Defendants

Thursday, September 30, 2021

Reported by:

D. Iwalani Carr, RPR, CSR

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1 BE IT REMEMBERED THAT, pursuant to Federal
2 Rules of Civil Procedure, the deposition of KEVIN
3 BRATCHER was taken before D. Iwalani Carr, RPR, CSR, a
4 professional shorthand reporter certified by the State
5 of Oregon, that pursuant to ORS 44.320 said reporter is
6 empowered to administer oaths to witnesses, that the
7 above-named witness was placed under oath on Thursday,
8 September 30, 2021, commencing at the hour of 9:18 a.m.,
9 in the conference room of the Law Offices of Lafky &
10 Lafky, in the City of Salem, County of Marion, State of
11 Oregon.

12 --o0o--
13

14 APPEARANCES:
15

16 For the Plaintiff:
Lafky & Lafky
17 By: Marcus I. Vejar
429 Court Street NE
18 Salem, OR 97301

19 For the County Defendants:
Law Offices of Montoya Hisel and Associates
20 By: Kenneth S. Montoya
901 Capitol Street NE
21 Salem, OR 97301

22 For the City Defendants:
City of Salem Legal Department
23 By: Jennifer Gaddis
555 Liberty St. SE, Room 205
24 Salem, OR 97301
25

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1 Q. Hit anything?

2 A. Just the flooring.

3 Q. What kind of cell phone did you have at the
4 time?

5 A. An iPhone. 10:36

6 Q. Any damage done do it?

7 A. No, sir.

8 Q. Do you have one of those fancy cases that --

9 A. I have a case on it.

10 Q. -- impacts -- 10:36

11 A. Yes, sir.

12 Q. How soon after Salem PD gets there until
13 you're taken outside?

14 A. Within five minutes.

15 Q. And did your Ring doorbell capture you being 10:36
16 taken outside?

17 A. I believe so, sir.

18 Q. And you've given that to your attorney for him
19 to produce for us?

20 A. Yes, sir. 10:36

21 Q. Describe how you folks left your residence.

22 Who was in front?

23 A. It was Deputy Smith on my right side, and one
24 of the Salem police officers on the left side.

25 Q. And you indicated the Salem officer grabbed 10:36

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1 your biceps?

2 A. Yes, sir.

3 Q. How did Deputy Smith have you?

4 A. I believe he just had me on my arm, too.

5 Q. Now, the way you described, you kind of put 10:37
6 your left hand over your right biceps and it looked
7 fairly loose.

8 Is that accurate?

9 A. Yeah. He didn't have -- he didn't have force
10 on. 10:37

11 Q. Would you agree that it was an escort-type
12 hold?

13 A. Yes, sir.

14 Q. And was his position even with you or slightly
15 behind you? 10:37

16 A. Little bit behind me, I believe.

17 Q. And the Salem officer?

18 A. Beside me.

19 Q. Even with you?

20 A. I believe so. 10:37

21 Q. Where was the other Salem officer?

22 A. I can't remember if he walked out first or was
23 behind us.

24 Q. And you had, like, a screen door; right?

25 A. No, sir. 10:37

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1 asks how things are going with it.

2 Q. So it continues to bother you.

3 A. Yes.

4 Q. All right, sir. Let's take a look at
5 paragraph 16, please, of your complaint, page 5.

11:02

6 Are you good? Do you need a break?

7 A. No, I'm good.

8 Q. All right, sir. Please read along with me to
9 make sure I read this accurately.

10 "Plaintiff was handcuffed and detained in
11 Deputy Smith's patrol car, only later being released and
12 cited at the order of an on-duty sergeant. While being
13 brought to Deputy Smith's vehicle, Does 1 and 2 had

11:02

14 helped escort plaintiff, at which point one of the
15 officers had gripped plaintiff's left biceps so firmly
16 he had visible marks on his biceps. Despite plaintiff
17 being injured by Deputy Smith and had difficulty
18 walking, Does 1 and 2 forcibly walked plaintiff a

11:03

19 distance of over a football field to detain him in
20 Deputy Smith's vehicle. Plaintiff's foot was badly
21 injured due to Deputy Smith, and the actions of Does 1
22 and 2 only further contributed to plaintiff's pain and
23 suffering. The altercation between plaintiff and Deputy
24 Smith resulted in extensive property damage to the
25 plaintiff's home by kicking in the door and injury to

11:03

11:03

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1 plaintiff through the use of force to effectuate the
2 arrest. The district attorney's office for Polk County
3 did not pursue any other charges brought against
4 plaintiff."

5 Did I read that accurately, sir?

11:04

6 A. Yes, sir.

7 Q. All right. Here, it indicates you had
8 difficulty walking, but a few minutes ago you told us
9 you didn't notice anything to your foot until a half
10 hour later.

11:04

11 A. It didn't hurt, but I -- I had difficulty
12 walking, the shoes that I was wearing.

13 Q. Why?

14 A. I don't know.

15 Q. You didn't have any difficulty walking when
16 you went out to throw the paper or come back in, did
17 you?

11:04

18 A. No.

19 Q. So why did you have difficulty walking out?

20 A. I would assume because my foot was bothering
21 me, but I didn't notice it.

11:04

22 Q. Does that make sense to you?

23 A. Yeah.

24 Q. It does?

25 A. Mm-hm.

11:04

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1 remote and toss it?

2 A. I would say yes, ma'am.

3 Q. And you stated it was thrown on the floor?

4 A. Yes, ma'am.

5 Q. Approximately how far away from you was it 11:55
6 thrown?

7 A. To you to me, about three feet.

8 Q. It wasn't thrown at you?

9 A. No, ma'am.

10 Q. Did it hit anything on the way down? 11:55

11 A. Just the floor.

12 Q. And you don't recall them saying anything to
13 you prior to throwing the cell phone.

14 A. No.

15 Q. Was there any damage done to the cell phone or 11:55
16 the remote?

17 A. No, ma'am.

18 Q. I'm going to show you a video. And I
19 apologize for the numbering of my exhibits. They're a
20 bit out of order because we had some duplicative ones. 11:55
21 So this is going to be COS Exhibit 104.

22 I've had my sound muted so I didn't disturb,
23 so bear with me.

24 (COS Exhibit 104

25 video played.) 11:56

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1 A. No, ma'am, other than probably telling them
2 that I needed to shut my stimulator off.

3 Q. So I don't want you to guess. So I just want
4 to know if you actually heard specifically what you were
5 telling them. 11:58

6 A. It's too garbled.

7 Q. Okay. I'm going to keep playing it and I
8 might stop it and ask you some more questions. Okay?

9 (Video played.)

10 Okay. Now, I've paused it at 1:04 of 11:58
11 Exhibit 104, and can you identify the law enforcement
12 agency that has ahold of your right elbow?

13 A. That's Deputy Smith on my right side.

14 Q. And then on your left elbow, I know you can't
15 identify a name, but is that Salem PD over on the left? 11:58

16 A. Yes, ma'am.

17 Q. Okay. And it appears that Salem PD is
18 trailing slightly behind you in the video.

19 Is that correct?

20 A. It looks that way, yes, ma'am. 11:58

21 Q. And probably not easy for three grown men to
22 fit through a doorway at once?

23 A. No. It's not a very wide space right there.

24 Q. Okay.

25 A. Once out in the driveway is whenever everybody 11:59

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1 A. No, I do not.

2 Q. Was there anything that had happened
3 immediately prior to the incident that would have
4 caused --

5 A. No. 12:06

6 Q. Let me finish my question. Sorry.

7 A. Okay.

8 Q. It's okay. It's just for her benefit.
9 -- that would have caused marks on your left
10 arm? 12:07

11 A. No.

12 Q. Regarding the foot injury that you said you
13 started to feel approximately 30 minutes after the
14 incident, did you ever communicate that your foot was
15 injured to Salem police officers? 12:07

16 A. I didn't -- I didn't feel it at the time.

17 Q. So you did not communicate that to --

18 A. No.

19 Q. And just to follow up, did you ever
20 communicate to Deputy Smith that you had a foot injury? 12:07

21 A. No.

22 Q. Are there any other injuries besides the
23 injuries to your left arm that you are alleging Salem
24 Police Department officers caused?

25 A. No. 12:07

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1 2 then grabbed the cell phone and control device from
2 plaintiff's hand and threw them across the room without
3 any provocation from plaintiff."

4 Is that a correct reading of that sentence?

5 A. Yes, ma'am. 12:17

6 Q. Okay. So as I understand your testimony
7 today, they took the cell phone and charger and threw
8 them on the floor.

9 Is that correct?

10 A. Mm-hm. 12:17

11 Q. Okay. So a little different than here, but
12 they didn't throw it across the room at anything;
13 correct?

14 A. It was kind of like a toss to the floor.

15 Q. Okay. Okay. Thank you. 12:17

16 A. And that's what you could hear on the video,
17 me telling them I needed my stimulator remote to work on
18 my stimulator.

19 Q. And Deputy Smith ultimately picked it up and
20 gave it back to you; right? 12:17

21 A. Yeah.

22 Q. Okay. Great.

23 And in paragraph 16, I'm looking at the third
24 sentence: "Despite plaintiff having been injured by
25 Deputy Smith and had difficulty walking, Does 1 and 2 12:17

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1 deputy's car. I was complying with everything that was
2 going on.

3 Q. You've already testified, however, that they
4 did not have any sort of extensive conversations with
5 Deputy Smith when they arrived; correct? 12:22

6 A. Yes, ma'am. Not that I recall.

7 Q. Okay. They asked why you were cuffed in the
8 front, but that was it; correct?

9 A. Yes, ma'am.

10 Q. So how do you know that they were aware that 12:22
11 you didn't need to be guided to his vehicle in that
12 manner?

13 A. Because I was complying with everything that
14 was being said, other than I was trying to get my remote
15 back for my stimulator to shut it off. 12:22

16 Q. Okay.

17 Is it possible that those marks could have
18 been caused when they were trying to fit through a door
19 that was not very wide?

20 A. I don't know, ma'am. 12:22

21 Q. Is it possible?

22 A. Could be. Maybe.

23 Q. But certainly you don't remember a particular
24 moment where the Salem officer --

25 A. No. 12:23

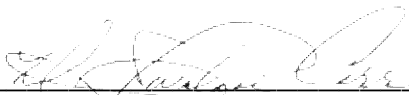
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CERTIFICATE

I, D. Iwalani Carr, a certified Shorthand Reporter for Oregon, hereby certify that, pursuant to Federal Rules of Civil Procedure, KEVIN BRATCHER personally appeared before me at the time and place set forth in the caption hereof; that at said time and place I reported in Stenotype all testimony adduced and other oral proceedings had in the foregoing matter; that thereafter my notes were reduced to typewriting under my direction, and that the foregoing transcript, pages 1 to 145, both inclusive, constitutes a full, true and accurate record of all such testimony adduced and oral proceedings had, and of the whole thereof.

Witness my hand and CSR seal at Silverton,
Oregon, this 14th day of October, 2021.


D. Iwalani Carr
Certified Shorthand Reporter
Certificate No. 90-0220
License expires 9/30/22

